SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, DICK KLINGE, ITS BUSINESS AGENT, AND MEL ANDREWS, ITS SECRETARY,

Petitioners,

vs.

E. HANKE, L. J. HANKE, R. R. HANKE AND R. M. HANKE, COPARTNERS DOING BUSINESS UNDER THE NAME AND STYLE OF ATLAS AUTO REBUILD,

Respondents.

RESPONDENTS' BRIEF

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vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE, Copartners Doing Business under the Name and Style of ATLAS AUTO REBUILD,

Respondents.

ANSWER OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

To the Honorable Supreme Court of the United States:

The Atlas Auto Rebuild, a co-partnership composed of A. E. Hanke, L. J. Hanke, R. R. Hanke and R. M. Hanke, now appear in opposition to petitioners' prayer for the issuance of a Writ of Certiorari directed to the Supreme Court of the State of Washington to review that Court's final

decree confirming the decree of the Superior Court of King County, Washington, permanently enjoining the picketing of respondent's place of business.

Statement of Matter Involved

We have no objection to petitioner's statement as set out on page 2, et sequitur, of their brief and we adopt it as our statement so far as it goes.

The Supreme Court of the State of Washington, the highest court of this state, is composed of nine members and this case was tried before the whole court and the judgment of the trial court was confirmed by six judges, three dissenting. All the decisions of this Court were cited and carefully considered by our State Supreme Court.

The judgment sought to be reviewed is the final and appealable judgment of that court.

Jurisdiction

We now object to the jurisdiction of this court to entertain this application for a writ of certiorari because there is no special reason why a direct appeal should not be taken and the judgment of the said court reviewed in that way.

Facts of the Case

It is said in part by our Supreme Court that the defendants are picketing and causing the business of the plaintiffs to be picketed as alleged in their complaint. * * *

That plaintiffs do not belong to any union and they employ no one whatsoever and no labor controversy exists, and said picketing of plaintiffs' place of business is carried on by defendants for the purpose and with the intention of coercing plaintiffs to join defendants' union or some union and to operate as a union shop.

That defendants are deliberately, by implied threats and intimidation, and by picketing and otherwise, seeking to prevent and are now preventing plaintiffs' customers from entering their place of business, with the result that plaintiffs' business is being gravely injured and interfered with and before long it will be destroyed, and that the controling question involved in the appeal, under the facts in the instant case, is whether or not the granting of injunctive relief by the trial court against the appellant union and its representatives violates the provisions of the Federal Constitution forbidding abridgement of freedom of speech, and said statement ended by saying

> "We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States." (R. 31)

There was a like ruling in *Cline v. Automobile Drivers*, etc. Union by our Supreme Court on June 3, 1949, Vol. 133, No. 1, Washington Decisions, page 644.

The Question Presented

So the question before this court is whether or not the Fourteenth Amendment to the United States Constitution prevents the courts from granting injunctive relief against a labor union and the members thereof, to prohibit such union from peacefully picketing a business which employs no one, a member of the union or otherwise, for the purpose of compelling a copartnership to join a particular Union, or sign a contract not to operate a business during hours objectionable to the Union?

The Supreme Court of Washington has held, in the case at bar, that under such facts even peaceful picketing by a labor union "is unlawful and not protected by the 14th Amendment to the Constitution of the United States."

In the Trial Court, the judge trying this case held, as a Conclusion of Law, II, (R. 15),

> "That no labor dispute exists within the meaning of the laws of the State of Washington and said picketing is, therefore, unlawful, and the plaintiffs are entitled to an injunction", etc.

Conclusion III was to the effect that said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech, etc.

The Supreme Court of the State said, in its opinion, (R. 23)

> "It will be borne in mind that at the time the picketing was started by the appellants, the respondents had no hired help, but, themselves, did all the work connected with the operation of their business; that no member of their partnership was a member of either Local 309 or Local 882, and that the controlling question involved in this appeal is whether or not under the facts of the instant case the granting of injunctive relief by the Trial Court against the appellant Union and its representatives violates the provisions of the Federal Constitution forbidding the abridgement of freedom of speech."

We quote the above to show clearly the exact issue and decision called for.

This decision followed and was made admittedly by the Trial Court following the recent holding of the State Supreme Court in Gazzam Bldg. Service Employees reported in 29 Wash. (2nd) 488, 188 Pac. 2nd 97, a case in which Gazzam contended that the sole purpose of the picketing and the listing as unfair was to compel him to coerce his employees to join the Union against their will; he further contended that coercion is contrary to the public policy of this state

as declared by the Labor Dispute Acts, Chap. 7, page 10, Laws of 1933, Ex. Ses. (Rem. Rev. Stat. Sup. 7612-2). The Union, on the other hand, contended that picketing by a union, even though such union does not include in its membership any employee of the party picketed is nevertheless legal.

In the case at bar, our State Supreme Court held as in the Gazzam case that the picketing activity conducted by the Union constituted coercion and was, therefore, unlawful; and granted a permanent injunction and these two cases are now the law of the State of Washington.

It was urged by petitioners that the holding in the Gazzam case and that in this case is in direct conflict with certain holdings of this court, but in the present case, after reviewing all of those decisions, the court said:

> "Our view of the effect of these decisions does not coincide with that of appellant. We do not believe that the U. S. Supreme Court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal Constitution; nor do we believe that the U. S. Supreme Court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community."

The respondent father and his sons chose to run their business alone and they were protected in this by the laws of our state, Rem. Rev. Stat. (Sup.) 7612-2, wherein it is said,

> "Wherefore, *though he should be free to decline to associate with his fellows*, it is necessary that he have full freedom of association, self-organization, etc."

Yet, in spite of this basic law, petitioners claim respondents have no right to work independent of unions and unions

have the right to tell them either to join the union or by contract to obey all union rules as to how and when they work; and if they refuse the union can do whatsoever is necessary to force them into line; that while picketing is done for the purpose of forcing them and to coerce them to do as demanded, such coercion is lawful under the doctrine of free speech.

This is a lawsuit between petitioners and a labor union that does not include in its membership any employee of respondents and respondents are engaged in a simple family business.

What right have petitioners to insist or demand, at the threat or cost of the destruction of respondents' business or at all, that respondents join appellants' organization or sign an agreement to work only as union employers would have to?

Of course there is nothing unlawful for these men, the father and his sons, to operate a little business, and any attempt, like in this case, to deny or cripple their right to do so, is an unwarranted attempt by picketing by the union to unreasonably interfere with the freedom of liberty and property right of contract.

While petitioners on their side have the right to belong to a union, on the other hand respondents have the right to operate their own business by themselves, and the right of the one is as strong as that of the other.

In the *Gazzam v: Bldg. Service, etc.*, 29 Wn. 2nd, p. 498, our court said:

> "We considered the constitutional questions presented in the cases cited (including *Carpenters & Joiners Union of America v. Ritters Cafe*, 315 U.S. 722) and made clear the rule that should be applied in picketing as follows:

The U. S. Supreme Court has, by these cases, established this rule: Peaceful picketing is an exercise of the right of free speech. Organized labor has the right to communicate its views either by word of mouth or by use of placards. This is nothing more nor less than a method of persuasion. But when picketing ceases to be used for the purpose of persuasion—just the minute it steps over the line from persuasion to coercion—it loses the protection of the constitutional guaranty of free speech and the person or persons injured by its acts may apply to a court of equity for relief."

Our court, in the instant case, held that

"The purpose of picketing in the present instance was (1) indirectly to compel the respondents to become members of one or the other, or possibly both of the two unions above mentioned; and (2) directly to coerce the respondents to enter into an agreement under which they would carry on their business only during those hours and days arbitrarily fixed by the Automobile Salesmen's Union, Local 882. We now find and here declare that the picketing activity conducted by Local 309, at the instance of Local 882, constituted coercion and was therefore unlawful". (R. 26).

If we may quote from the trial court's decision, we refer to it on (R. 99):

"All picketing is coercive. The word 'picketing', of course, is taken from the nomenclature war. The only purpose that I can conceive of picketing is for the purpose of compelling the person picketed to accede to the demands of the one doing the picketing. The picket certainly had some other purpose in his patrol than exercise."

In the case at bar, none of the respondents belonged to a union and refused to join the picketing union or any other. The object of the picketing was to compel the respondents, against their desire, to join the union. We contend that under

these circumstances the picketing was wrongful, coercive and oppressive and that it was properly enjoined. The picketing was never done as an act of persuasion but was intended as coercive and if continued would have made it impossible for respondents to have continued in business.

Your Honors said in the case of Bakery & Pastry Drivers, etc. v. W.O.H.L., 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816, that "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." That is the case most strongly relied upon by petitioners before the State Supereme Court, and that court found the facts so different as to be clearly and readily distinguishable. See the opinion in that case. The facts in the bakery case showed that the situation had grown so bad as to become a public menace. Our court said

> "'The facts of the case at bar present no such appealable picture"

and further said that the conclusion seemed irresistible that the union's interest in the welfare of a mere handful of members was far outweighed by the interest of individual proprietors and the people as a whole, to the end that little businessmen and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy.

The court quoted Justice Hughes in *Near v. Minnesota*, 283 U.S. 697, as follows:

> "Whenever state action is challenged as a denial of 'liberty', the question always is whether the state has violated 'the essential attributes of that liberty' ".

While the right of free speech is embodied in the liberty safeguarded by the due process clause, that clause postulates the auhority of the state to translate into law local policies—

'to promote the health, safety, morals and general welfare of its people * * * the limits of this sovereign power must always be determined with appropriate regard to the particular subject of is exercise, Ibid, at 707 (75 Law Ed. 1357, 51 S. Ct. at page 628). 'The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions, that this or that concrete case falls on the nearer or further side'. *Hudson Water Co. v. McArthur*, 209 U.S. 349, etc."

Our court went on to say:

> "In our opinion there is small reason for holding that the appellant union acting under the guise of protecting the union's freedom of speech, cannot be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted."

"Our State of Washington, while not a party to this action, is interested in having its laws upheld, namely, its labor dispute act heretofore cited, and like this court stated in *Giboney v. Empire Storage & Ice Co.* (April 1949) 16 Labor Cases (c.c. 8 paragraph 65062) from Mo., we say here:

> "There was clear danger imminent and that unless restrained appellants would succeed in making that policy a dead letter insofar as purchases by non-union men were concerned. Appellants' power with that of their allies was irrisistible and it is clear that appellants were doing more than exercising the right of free speech or press. *Bakery Drivers v. Wohl*, 315 U.S. 769, 776, 777. They were exercising their normal power together with that of their allies to compel Empire to abide by union rather than by state regulation of trade."

So Your Honors held that Missouri's power to govern in this field was paramount and that nothing in the constitu-

tional guaranty of speech or press compelled a state to apply or not apply its anti-trade restraint law to groups of workers, businessmen or others. And said:

> "Of course this court does not pass on the wisdom of the Missouri statute. We hold only that as here construed and applied it does not violate the Federal Constitution."

We think that the Giboney decision is in point and we also cite, without quoting or comment, your decisions in *Kovacs v. Cooper* (Jan. 1949) (Adv. Op. 379), and we believe under all these decisions that the picketing here involved, under all circumstances, under the policy of our legislature as established, is not protected under the free speech clause of our Federal Constitution. Non-employees were picketing for an unlawful purpose under the Giboney case and the opinion of our State Supreme Court in the present case is in accordance with the decisions of this court, and we respectfully urge that the petition for writ of certiorari should be denied.

Respectfully submitted,

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